REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed May 20, 2004. Reconsideration and allowance of the application and presently pending claims 1-41, as amended, are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-41 remain pending in the present application. More specifically, claims 1, 12, 23, 34 and 36-41 are directly amended. These amendments are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

2. Response to Rejection of Claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32 and 34-41 Under 35 U.S.C. §102(e)

In the Office Action, claims 1, 2, 8-10, 12, 13, 19-21, 23, 24, 30-32 and 34-41 stand rejected under 35 U.S.C. §102(a) as allegedly being unpatentable by *Engel et al.* (U.S. Patent 6,320,585), hereinafter *Engel.* For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. See, *e.g.*, *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

a.   Independent Claims 1, 12, 23, 34, 36 and 37-41

Applicant respectfully submits that independent claims 1, 12, 23, 34, 37-39 and 41, as amended, are allowable for at least the reason that *Engel* does not disclose, teach, or suggest the feature of a "summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a plurality of days of interest and to a portion of said days of interest, and wherein said portion is less than a day and specified by the times of the day that are of interest" as recited in claims 1, 12, 23, 34, 37-39 and 41. Similarly, independent claims 36, 37 and 41, as amended, are allowable for at least the reason that *Engel* does not disclose, teach, or suggest the feature of a "plurality of selected data parameters corresponds to a plurality of summary periods, and wherein each said summary period corresponds to a plurality of days of interest and to a portion of said days of interest,

and wherein said portion is less than a day and selected by the times of the day that are of interest" as recited in claim 36, and a "plurality of summary periods, each said summary period corresponding to a different portion of said reporting period, and wherein each said summary period corresponds to a plurality of days of interest and to a portion of said days of interest, and wherein said portion is less than a day and specified by the times of the day that are of interest" as recited in claim 41. The Examiner is respectfully directed to page 16, lines 6-7 of the Specification for support for this amendment.

Applicant believes that *Engel* does not disclose, teach, or suggest using a summary period corresponding to a plurality of days of interest and to a portion of said days of interest, and wherein said portion is less than a day and specified by the times of the day that are of interest. *Engel* **requires** that "the polled data be collected on the relevant variable for a base line period (e.g. 3-6 weeks)." (Col. 8, lines 21-22.) In *Engel* "from the polled data that is accumulated in the database at the console, the report generator produces a history table 90, such as shown in FIG. 9. The history table 90 includes a record 92 for *each day* of a *baseline period*. ... The granularity of the data that is stored in the history table is *one day*. Thus, the entry that is placed in the time field is the day for which the data corresponds." (Emphasis added, Col. 8, lines 35-43.) Accordingly, "the report generator then produces a stack bar for each segment (step 115)." (Col. 7, lines 35-36.) Thus, *Engel* does not anticipate independent claims 1, 12, 23, 34, 36-41 because *Engel* does not teach, disclose or suggest *any type of a period that is less than a full day*. Accordingly, the rejection should be withdrawn.

b.   Dependent Claims 2, 8-10, 13, 19-21, 24, 30-32 and 35

Applicant respectfully submits that independent claims 2, 8-10, 13, 19-21, 24, 30-32 and 35 are allowable .

Because independent claim 1 is allowable over the cited art of record, dependent claims 2 and 8-10 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 2 and 8-10 contain all features/elements of independent claim 1. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Similarly, because independent claims 12, 23 and 34 are allowable over the cited art of record, dependent claims 13 and 19-21 (which depend from independent claim 12), dependent claims 24 and 30-32 (which depend from independent claim 23), and dependent claim 35 (which depends from independent claim 34) are allowable as a matter of law for at least the reason that the above-described dependent claims contain all features/elements/steps of their respective independent claim. Accordingly, the rejection to these claims should be withdrawn.

3.   Response to Rejection of Claims 3, 11, 4-7, 14-18, 22, 25-29 and 33 Under 35 U.S.C. §103

In the Office Action, claims 3, 14 and 25 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel*, in view of *VanDervort* (5,699,346). Claims 4-7, 15-18 and 26-29 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel* in view of *VanDervort*, and further in view of *Grevious* (US. Patent 6,167,310). Finally, claims 11, 22 and 33 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Engel* in view of *Colmant et al.* (U.S. Patent 6,144,662).

In the Office Action, *Engel* is used as a reference in 35 U.S.C. §103(a) rejection of claims 3, 11, 4-7, 14-18, 22, 25-29 and 33. However, Applicant respectfully asserts that *Engel **is not a valid reference*** against the Applicant's invention because *Engel **teaches away*** from the above-listed claims. ***Cited art may not be used for an obviousness type rejection when the cited art diverges or teaches away from the claims of the present invention.*** [See e.g., *W.L. Gore & Assocs. V. Garlock, Inc.*, 699 F.2d 1331, 1333, 216 U.S.P.Q.1038, 1040 (Fed. Cir. 1983).]

Engel teaches away from the novelty of the present invention because *Engel* discloses "that if data for some of the polling cycles was not received, the total number of polls represented was not received, the total number of polls represented in the segment table will be less than the total number of possible polls for the day. In this case, the height of the stack bar (i.e., the combined height of the individual sections) will be less that 100%. In other words, when a 'white space' appears at the top of the bar this indicates to the network administrator that some problem interfered with the collection of data for that segment." (Col. 7, lines 56-64.) The *Engel* stack bars are illustrated in *Engel* FIG. 2. *Engel* further

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emphasizes the point that every stack bar corresponds *to one complete day* by stating that "the total height of a stack bar 30 is a sum of the heights of all of the sections. If the segment was fully operational and all bandwidth utilization statistics for it were successfully gathered throughout the day, the total height will be 100%. However, if the segment was not operational throughout the day or less than all bandwidth utilization statistics were successfully gathered, the total height 16 will be less that 100%." (Col. 5, lines 8-15.)

In the above-recited portion of the *Engel* Specification, *Engel* _expressly discloses_ that "when a 'white space' appears at the top of the bar this indicates to the network administrator that some problem interfered with the collection of data for that segment." Accordingly, in all instances when a "summary period ... is less than a day and specified by the times of the day that are of interest" under *Engel*, the *Engel* user would understand that "data for some of the polling cycles was not received, the total number of polls represented was not received, the total number of polls represented in the segment table will be less than the total number of possible polls for the day." That is, *in all situations*, the *Engel* user is specifically taught that if one of the above-described errors occurs, the *Engel* display will indicate "a 'white space' appears at the top of the bar." It is not possible for the user to appreciate anything else from the *Engel* disclosure.

In contrast, with various embodiments of the present invention, a "summary period ... less than a day and specified by the times of the day that are of interest" would be displayed and *would not* constitute an error condition. However, under the teachings of *Engel*, the user *would* misinterpret such information and conclude "that some problem interfered with the collection of data for that segment." (*Engel* at Col. 7, lines 62-64.) This misinterpretation caused by the express teachings of *Engel* constitutes a clear and indisputable *teaching away* of *Engel* from all embodiments of the present invention.

Because *Engel* is not a valid reference against the Applicant's invention, since *Engel* teaches away from all embodiments of the present invention, a *prima facie case* of obviousness has not been established. Therefore, the rejection to claims 3, 11, 4-7, 14-18, 22, 25-29 and 33 should be withdrawn.

4.   Telephonic Conversation with Examiner on August 18, 2004

On October 18, the Applicant's undersigned attorney and the Examiner discussed the Applicant's request to schedule an interview to discuss the merits of the case. In declining the Applicant's request, the Examiner offered to call the undersigned attorney after reviewing the Applicant's Response, and *before* issuance of a Final Office Action, should any issues of patentability remain. Applicant thanks the Examiner for his willingness to call the undersigned attorney to discuss any remaining issues of patentability.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now 1-41 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

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